

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Anastasia Plakas	Team: Squad #6	CCRB Case #: 201503846	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 05/13/2015 9:15 PM, Thursday, 05/14/2015	Location of Incident: Tompkins Avenue and Greene Avenue and the 79th Precinct Stationhouse	Precinct: 79	18 Mo. SOL 11/13/2016	EO SOL 11/13/2016	
Date/Time CV Reported Thu, 05/14/2015 3:15 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 05/14/2015 5:12 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. An officer			079 PCT
2. POM Jamaal Miller	18339	939039	079 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Christophe Brabham	05400	921166	079 PCT
2. SGT Tricia Connolly	1952	937258	079 PCT
3. LT Jonathan Catanzaro	00000	928046	079 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Jamaal Miller	Force: On May 13, 2015, PO Jamaal Miller pointed his gun at § 87(2)(b)	
B.POM Jamaal Miller	Force: On May 13, 2015, PO Jamaal Miller used physical force against § 87(2)(b)	
C.POM Jamaal Miller	Discourtesy: On May 13, 2015, PO Jamaal Miller spoke discourteously to § 87(2)(b)	
D.POM Jamaal Miller	Abuse: On May 13, 2015, PO Jamaal Miller threatened § 87(2)(b) with the use of force.	
E.POM Jamaal Miller	Abuse: On May 13, 2015, PO Jamaal Miller strip-searched § 87(2)(b)	
F. An officer	Force: On May 14, 2015, an officer used physical force against § 87(2)(b)	

Case Summary

On May 14, 2015, § 87(2)(b) filed this complaint with IAB via telephone, generating IAB Log No. 2015-13285 (See Board Review 01). On May 15, 2015, § 87(2)(b) filed a duplicate complaint with the CCRB via the Call Processing System (See Board Review 02). An OCD spin-off (CCRB#201504000) was generated with regard to § 87(2)(b)'s allegation that his property was not vouchered following his arrest.

On May 13, 2015, at approximately 9:15 p.m., § 87(2)(b) was outside of the 79th Precinct Stationhouse in Brooklyn when he approached PO Jamaal Miller to ask for money for a meal. § 87(2)(b) alleged that PO Miller drew and pointed his gun at § 87(2)(b) (**Allegation A**), before grabbing him by the shirt and pushing him into the stationhouse (**Allegation B**). Once inside, PO Miller spoke discourteously to § 87(2)(b) stating, "I don't give a fuck about that," and "Shut the fuck up" (**Allegation C**). PO Miller also threatened § 87(2)(b) with the use of force, both at the front desk and inside the holding cell area, stating, "You're gonna learn today," and "You're lucky I didn't punch you in your face" (**Allegation D**). § 87(2)(b) alleged that PO Miller also strip-searched him (**Allegation E**). § 87(2)(b) was arrested for criminal possession of marijuana and unlawful possession of marijuana.

On May 14, 2015, at approximately 3:00 p.m., § 87(2)(b) returned to the 79th Precinct Stationhouse to retrieve his vouchered property and file a complaint against PO Miller. § 87(2)(b) was inside the stationhouse for approximately 40 minutes before an officer grabbed him by his shoulders and pushed him outside (**Allegation F**).

Mediation, Civil, and Criminal Histories

Because § 87(2)(b) was arrested as a result of this incident, the case was deemed unsuitable for mediation. As of July 24, 2015, the Notice of Claim inquiry with the New York City Comptroller's Office was still pending (See Board Review 03). § 87(2)(b)

§ 87(2)(b)

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§ 87(2)(b)

Civilian and Officer CCRB Histories

- PO Miller has been a member of the NYPD for ten years. Four of his previous CCRB cases have resulted in a total of thirteen substantiated allegations. To date, he has had 48 allegations pled against him in 14 cases, which have resulted in the following patterns:
 - *Gun Pointed*: In CCRB#200915228, the complainant/victim alleged that PO Miller pointed a gun at him/her. This allegation was closed as exonerated. In CCRB#201307739, the complainant/victim alleged that PO Miller pointed a gun at him/her. This allegation was unfounded.
 - *Physical Force*: In CCRB#200915288, a victim alleged that PO Miller punched him twice in the jaw. The investigator recommended a disposition of unsubstantiated and the Board closed it as unfounded. In CCRB#201303121, the complainant/victim alleged that PO Miller punched him above his left eye

approximately ten times. This allegation was closed as unfounded. In CCRB#201310547, the complainant/victim alleged that, in the patrol car, PO Miller hit him in the chest and that, in a cell of the station house, PO Miller smacked him in the face. This allegation was closed as unsubstantiated. In CCRB#201311584, the complainant/victim alleged that PO Miller punched him in the face below his left eye. This allegation was substantiated with charges. The case is currently pending with the CCRB Administrative Prosecution Unit (APU).

- *Discourtesy:* In CCRB#200910783, the victim alleged that PO Miller called her a “bitch.” This allegation was closed as unsubstantiated. In this case, the investigator noted that PO Miller casually used profanity in the CCRB interview room. In CCRB#201210869, the complainant/victim alleged that PO Miller told him, “I don’t have to answer shit,” and “I don’t give a fuck about your students.” Video footage captured PO Miller stating, “You need to stop listening to these fucking street lawyers on the corner.” This allegation was substantiated with charges. The case is currently pending with the CCRB Administrative Prosecution Unit (APU). In CCRB#201307739, the complainant/victim alleged that PO Miller twice stated that he would “choke the shit out of him.” This allegation was substantiated with charges. The NYPD disposition and penalty are still pending. In CCRB#201311584, the complainant/victim alleged that PO Miller asked, “So what was all that shit you was talking?” and also called him a “fucking pussy.” This allegation was substantiated with charges. The case is currently pending with the CCRB Administrative Prosecution Unit (APU). In CCRB#201401385, the complainant/victim alleged that PO Miller told him to “shut the fuck up” and that he was “fucking snitch.” This allegation was closed as unsubstantiated. In CCRB#201502769, the complainant/victim alleged that PO Miller told him to “shut the fuck up.” This case is still pending.
- *Threat of Force:* In CCRB#201210869, the complainant/victim and witness alleged that PO Miller threatened to break the complainant/victim’s wrist. This allegation was substantiated. The case is currently pending with the CCRB Administrative Prosecution Unit (APU). In CCRB#201303121, the complainant/victim alleged that PO Miller said he was lucky that he only got his “ass whooped” and did not get a bullet. This allegation was unsubstantiated. In CCRB#201307739, the victim alleged that PO Miller said, “We’ll see how tough you are when we get these cuffs off.” This allegation was closed as substantiated with charges. The case is currently pending with the CCRB Administrative Prosecution Unit (APU). In CCRB#201310547, a complainant/victim alleged that PO Miller was one of the two officers who were “attempting to provoke” him into fighting so they could charge him with assaulting an officer and said, “We’re going to take off the handcuffs and see what you’re made of.” This allegation was substantiated with charges. The case is currently pending with the CCRB Administrative Prosecution Unit (APU). In CCRB#201311584, the complainant/victim alleged that PO Miller told him, “We’re gonna see if you tough right now. Watch when we get back.” This allegation was substantiated. The case is currently pending with the CCRB Administrative Prosecution Unit (APU).
- *Strip-Search:* In CCRB#200713355, CCRB#201408861, and CCRB#201311584, the complainant/victims alleged strip-searches against PO Miller. The allegations in the first two cases were unsubstantiated, while the allegation in the third case was substantiated with charges. The case is currently pending with the CCRB

Administrative Prosecution Unit (APU). In CCRB#201311584, PO Miller was cited for failure to document a strip-search.

- This is the first CCRB complaint filed by § 87(2)(b) (See Board Review 05).
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Witnesses

The Prisoner Holding Pen Roster identified four potential witnesses to the allegations which occurred inside the holding cell area (See Board Review 06). On June 30, 2015, § 87(2)(b) was contacted by telephone and provided an unverified telephone statement about the incident (See Board Review 07). On July 14, 2015, § 87(2)(b) was contacted by telephone and provided a statement about the incident (See Board Review 08). § 87(2)(b) was subsequently interviewed by the Field Team on July 16, 2015 (See Board Review 09). Numerous contact attempts were made to the remaining witnesses, § 87(2)(b) and § 87(2)(b) both of whom failed to respond.

Findings and Recommendations

Allegations not pleaded

Allegation— Gun Drawn: In his initial CCRB voice messages from May 15, 2015; his detailed phone statement from May 21, 2015 (See Board Review 10); and his CCRB interview (See Board Review 11), § 87(2)(b) alleged that PO Miller drew and pointed his firearm at § 87(2)(b) outside of the stationhouse. Because the action of drawing a gun is embedded within the action of pointing it, and because the pointing of a gun is the more serious allegation, the allegation of gun drawn has been subsumed in the gun pointed allegation. Therefore, an allegation of gun drawn has not been pled to PO Miller.

Allegation— Discourteous Gesture: In his initial statement to IAB, § 87(2)(b) alleged that multiple officers in the holding cell area made fun of how bad he smelled and sprayed an air freshener (See Board Review 01). § 87(2)(b) also alleged that he observed one officer tell § 87(2)(b) “Why you stinking up my cell?” before spraying an air freshener (See Board Review 09). However, in his CCRB interview, § 87(2)(b) only stated that officers made fun of him because his feet smelled. He did not elaborate on how they mocked him and did not repeat that an officer sprayed an air freshener (See Board Review 11). Therefore, an allegation of discourteous gesture has not been pled to an officer.

Explanation of Subject Officer Identification

Across all four of his statements about the incident, § 87(2)(b) was consistent in alleging that his arresting officer, PO Miller, pointed his firearm at § 87(2)(b) used physical force against him, spoke discourteously, made threats of force, and strip-searched him, although § 87(2)(b) mistakenly initially referred to PO Miller as “Det. Miller” (See Board Review 01, Board Review 02, Board Review 10, Board Review 11). In his CCRB statement, PO Miller acknowledged interacting with and arresting § 87(2)(b) on the date of the incident (See Board Review 12). Although PO Miller disputed § 87(2)(b)'s version of events, it is clear that he was the primary officer § 87(2)(b) interacted with throughout the encounter. Therefore, **Allegations A through E** are pled to PO Miller.

§ 87(2)(b) stated that he returned to the stationhouse the day after his arrest, initially with the intention of retrieving his vouchered property. § 87(2)(b) further alleged that, after approximately 30 minutes of trying to retrieve his property and file a complaint report, an unidentified officer walked over and pushed him out of the stationhouse. § 87(2)(b) did not obtain the officer's name (See Board Review 11). § 87(2)(b)'s presence in the station house was noted on the Command Log for May 14, 2015 (See Board Review 13). Sgt. Connolly, the desk sergeant who spoke to § 87(2)(b) stated that § 87(2)(b) left the stationhouse without incident.

She denied observing any officer push § 87(2)(b) out of the stationhouse and did not recall any officer escorting § 87(2)(b) outside (See Board Review 14). The investigation was unable to determine which officer might have pushed § 87(2)(b) out of the stationhouse. Therefore, **Allegation F** has been pled to “an officer.”

Allegation A—Force: On May 13, 2015, PO Jamaal Miller pointed his gun at § 87(2)(b)

§ 87(2)(b) stated that he approached PO Miller in order to ask for some money for food. § 87(2)(b) said, “Officer,” to gain PO Miller’s attention. PO Miller turned around and asked § 87(2)(b) what the problem was. § 87(2)(b) apologized that PO Miller was having a bad day. After PO Miller turned around and continued walking, § 87(2)(b) again attempted to get his attention and asked for some money to get food. § 87(2)(b) alleged that PO Miller turned around and pointed a § 87(2)(b) black pistol at § 87(2)(b)’s neck for approximately ten seconds without issuing any commands or making any statements. § 87(2)(b) raised both of his hands before both men walked away from each other (See Board Review 11).

PO Miller stated that, as he left the stationhouse at approximately 9:15 p.m., he saw two men following him. When PO Miller turned the corner, he positioned himself to face the two men. When the two men moved around the corner and saw him, one ran away. The other, known to the CCRB as § 87(2)(b) remained where he was and asked PO Miller for money. PO Miller identified himself as an officer and showed § 87(2)(b) his shield. PO Miller noted that he could only see one of § 87(2)(b)'s hands. § 87(2)(b) moved closer towards him and PO Miller feared for his safety. In response, PO Miller reached towards his firearm (See Board Review 12).

§ 87(2)(g)

PO Miller initially stated that he grabbed his firearm and that it would have been a mistake to pull it out further. He later stated that, while he knew his hand was on his firearm, he did not recall if he removed his firearm from his holster or what position it was in (See Board Review 12).

Although PO Miller § 87(2)(g) his statements do make it clear that he feared that removing his firearm entirely could escalate a potentially dangerous situation. § 87(2)(b) alleged that PO Miller removed his firearm entirely and pointed it at him; PO Miller was not clear on how far his gun was removed, but did not acknowledge pointing it at § 87(2)(b).

[illegible]

Allegation B—Force: On May 13, 2015, PO Jamaal Miller used physical force against

§ 87(2)(b)

§ 87(2)(b) stated, following his encounter with PO Miller, he entered the 79th Precinct Stationhouse and asked for a supervisor, identified via investigation as Lt. Catanzaro. § 87(2)(b) informed Lt. Catanzaro that one of his officers had just pulled a gun on § 87(2)(b) and Lt. Catanzaro walked outside, at which point PO Miller reappeared. § 87(2)(b) alleged that PO Miller walked up to him, said, “Oh, you’re trying to walk up on me?” and grabbed him. § 87(2)(b) further alleged that PO Miller then pushed him back through two front doors leading into the stationhouse and pushed him up to the front desk (See Board Review 11).

PO Miller acknowledged grabbing § 87(2)(b) at which point he considered him under arrest. PO Miller walked § 87(2)(b) 10 to 15 feet towards the stationhouse and brought him inside. PO Miller denied using any additional force against § 87(2)(b) such as using § 87(2)(b)’s body to open the doors of the stationhouse (See Board Review 12).

Lt. Catanzaro had minimal recollection of the incident. He denied observing PO Miller push § 87(2)(b) through the doors of the stationhouse or physically using § 87(2)(b)’s body to push open the doors. Lt. Catanzaro characterized the interaction between PO Miller and § 87(2)(b) as fairly calm (See Board Review 15).

§ 87(2)(b), § 87(2)(g)

Allegation C—Discourtesy: On May 13, 2015, PO Jamaal Miller spoke discourteously to

§ 87(2)(b)

Allegation D—Abuse of Authority: On May 13, 2015, PO Jamaal Miller threatened § 87(2)(b) with the use of force.

§ 87(2)(b) alleged that, as PO Miller searched him and removed his personal items at the front desk following his arrest, PO Miller told, “You’re gonna learn today.” When § 87(2)(b) asked if he could keep one item of a religious nature, PO Miller allegedly replied, “I don’t give a fuck about that. You’re gonna learn today.”

Once PO Miller brought § 87(2)(b) to the holding cell area and to allegedly strip-search him (see Allegation E, below), PO Miller allegedly told § 87(2)(b) “Shut the fuck up,” and either stated, “You’re lucky I didn’t punch you in your face,” or, “I should have punched you in your face.” Immediately before placing § 87(2)(b) in the holding cell, PO Miller allegedly told him, “Go ahead. Make a move. I want you to make a move” [in his phone statement a month earlier, § 87(2)(b) alleged that PO Miller also told him, “I want you to move funny. Swing. I wish you would swing”] (See Board Review 11).

In his phone statement, § 87(2)(b) stated that he heard PO Miller tell § 87(2)(b) to be quiet and not to ever run up on him like that again. He also alleged that PO Miller told § 87(2)(b) “I’ll punch you in the face,” and “I’ll knock you the fuck out” (See Board Review 08). In his

interview, § 87(2)(b) alleged that PO Miller told § 87(2)(b) “I would have knocked you out,” and to “shut the fuck up” (See Board Review 09).

PO Miller denied making the specific discourteous remarks or threats of physical force towards § 87(2)(b) or hearing any officer make those discourteous remarks or threats. PO Miller denied using any profanity or discourtesy towards § 87(2)(b) making any threats of force, or hearing any officer do so (See Board Review 12).

Sgt. Brabham denied hearing PO Miller tell § 87(2)(b) “You’re going to learn today,” or, “I don’t give a fuck about that,” at the front desk, although he did not recall if PO Miller used any profanity or discourteous language with § 87(2)(b). Sgt. Brabham denied hearing PO Miller tell § 87(2)(b) “You’re lucky I didn’t punch you in your face,” or, “I should have punched you in your face,” although those comments were made in the holding cell and he would not have been present for them. Sgt. Brabham denied hearing PO Miller or any officer make threats of force against § 87(2)(b) (See Board Review 16).

Lt. Catanzaro denied hearing PO Miller tell § 87(2)(b) “You’re going to learn today,” or, “I don’t give a fuck about that,” at the front desk and denied hearing PO Miller used any profanity or discourteous language with § 87(2)(b). Lt. Catanzaro denied hearing PO Miller tell § 87(2)(b) “You’re lucky I didn’t punch you in your face,” “I should have punched you in your face,” “Make a move,” or “Swing,” although those comments were made in the holding cell and he would not have been present for them. Lt. Catanzaro denied hearing PO Miller or any officer make threats of force against § 87(2)(b) (See Board Review 15).

§ 87(2)(b), § 87(2)(g)
[REDACTED]

§ 87(2)(b), § 87(2)(g)
[REDACTED]

§ 87(2)(b), § 87(2)(g)
[REDACTED]

An officer must be courteous and respectful when interacting with the public. NYPD Patrol Guide 203-09 (See Board Review 17). All members of the service at the scene of a police incident must use minimum necessary force. NYPD Patrol Guide 203-11 (See Board Review 18). Gratuitous comments serving no purpose than intimidation constitute an abuse of an officer's authority. Police Department v. Briscoe. OATH Index No. 1328/00 (September 29, 2000) (See Board Review 19).

§ 87(2)(b), § 87(2)(g)

Allegation E—Abuse of Authority: On May 13, 2015, PO Jamaal Miller strip-searched

§ 87(2)(b) alleged that, after his personal property was removed at the front desk, he was brought into a restroom next to the holding cells by PO Miller, who told him to remove his clothing and squat. § 87(2)(b) removed his pants and boxers, before pulling down his boxers and squatting. A small bag or crumb of marijuana, which had been secreted near his genitals, fell to the ground and was recovered by PO Miller (See Board Review 11).

In both his phone statement and interview, § 87(2)(b) stated that § 87(2)(b) only removed his jacket and shoes after being brought into the restroom by PO Miller. § 87(2)(b) denied that § 87(2)(b) pulled down his pants and noted that he actually pulled them up, as he had no belt. § 87(2)(b) had a clear line of sight of § 87(2)(b) the entire time. § 87(2)(b) never lost sight of PO Miller and § 87(2)(b) and his attention was never diverted elsewhere during the encounter (See Board Review 08, Board Review 09).

PO Miller denied strip-searching § 87(2)(b) or requesting authorization for a strip-search. He was not aware of any officer conducting a strip-search of § 87(2)(b) or requesting authorization for one. He stated he did not “really” have any reason to believe § 87(2)(b) had additional contraband on him besides what had previously been recovered. He denied that § 87(2)(b) was exposed during any part of the incident (See Board Review 12).

Sgt. Brabham did not recall if PO Miller requested authorization to conduct a strip-search of § 87(2)(b) or if he conducted one. Sgt. Brabham denied hearing PO Miller speak to any other supervisor or request from them authorization to conduct a strip-search of § 87(2)(b). Sgt. Brabham never observed § 87(2)(b) exposed during the incident (See Board Review 16).

PO Miller never requested authorization from Lt. Catanzaro to conduct a strip-search of § 87(2)(b) and Lt. Catanzaro was not aware if a strip-search was ever conducted. Lt. Catanzaro did not hear any discussion between PO Miller and any other supervisor about conducting a strip-search of § 87(2)(b) (See Board Review 15).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation F—Force: On May 14, 2015, an officer used physical force against § 87(2)(b)

§ 87(2)(b) stated that he returned to the stationhouse on May 14, 2015, the day after his arrest, initially with the intention of retrieving his vouchered property. § 87(2)(b) spent approximately 30 minutes trying to retrieve his property, which was not in the system, before asking to file a complaint against his arresting officer. § 87(2)(b) began to fill out a complaint report, but could not receive confirmation from any of the officers of PO Miller's name and rank. § 87(2)(b) alleged that Lt. Catanzaro opened the door to the stationhouse and told him that it was time to leave. § 87(2)(b) did not refuse, but continued to speaking to another officer and did not leave the stationhouse. § 87(2)(b) alleged that an unidentified then walked up to him, grabbed him by the shoulders, and pushed him outside. § 87(2)(b) stumbled, but did not fall. Lt. Catanzaro then stuck his head outside the door and told § 87(2)(b) to stop harassing the officers (See Board Review 11).

Although PO Miller was aware that § 87(2)(b) returned to the stationhouse on May 14, 2015, he denied personally interacting with or speaking to § 87(2)(b) on that day (See Board Review 12). As noted above, Sgt. Connolly, the desk sergeant, stated that § 87(2)(b) left the stationhouse without incident. She denied observing any officer push § 87(2)(b) out of the station house and did not recall any officer escorting § 87(2)(b) outside (See Board Review 14). Lt. Catanzaro did not observe § 87(2)(b) inside the stationhouse on May 14, 2015, and did recall interacting with him on that day (See Board Review 15).

All members of the service at the scene of a police incident must use minimum necessary force. NYPD Patrol Guide 203-11 (See Board Review 18).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

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Pod:

Investigator: _____
Signature Print Date

Pod Leader: _____
Title/Signature Print Date

Attorney: _____
Title/Signature Print Date